

1392
SEP 28 1999

September 20, 1999

CALFED
Bay Delta Program
1416 Ninth Street, Suite 1155
Sacramento, CA 95814

Re: Comments of Quiet Hills Ranch Co.
to the June 1999 CalFed Bay-Delta Second
Draft Programmatic EIS/EIR (hereinafter "EIS/EIR")

Dear Administrators:

Quiet Hills Ranch Co. is a California Corporation owning approximately 11,070 acres of land in Tehama County abutting the proposed Thomes-Newville Off-Site Storage Facility. In addition, Quiet Hills Ranch Co. leases ground in the Orland Unit Water Users' Association (hereinafter, OUWUA) District.

Quiet Hills Ranch Co. (QHRC) submits its comments on the foregoing described document and appendices.

FAILURE TO ADDRESS COMMENTS TO PREVIOUS EIS/EIR

CalFed has apparently failed to address the comments of QHRC contained in the previous Programmatic EIS/EIR issued by the CalFed Bay-Delta Program in March 1998. QHRC believes that CalFed is legally required to address the comments contained in its previous submission, but CalFed has not done so.

QHRC specifically requests that a response in writing be submitted by CalFed to QHRC with respect to both the previous EIS/EIR and the EIS/EIR addressed herein.

COMMENTS TO SPECIFIC PRINCIPLES

A. Beneficiary Pay Principle The 1999 Revised Phase II Report (142-148) sets forth the "beneficiary pays principle". This concept is fraught with problems.

1. The North State is relatively lightly populated with a primary agricultural economic base. Imposing a Bay-Delta rehabilitation cost on the people of this area, on the theoretical grounds that these people have caused the degradation, is not going to work in light of the huge cost of the Proposed Program.

2. Imposing a Program benefit cost on identified users is equally impractical and unachievable. Imposing cost related to flood control merely on the people affected directly, rather than upon the entire State citizenry will render the financial cost related thereto impossible to be compensated. Requiring ag users' to pay and urban users' can only result in the elimination of agriculture in the North State because an urban users' water

rate will not permit an agriculture user to profitably farm land. The argument that those who have "caused" the Delta problems should bare the entire cost of improvements would, in itself, destroy the entire economy of the North State. Under the same analysis, only those benefited by levee enhancement should bear the cost of that aspect of the program. One has to question how one allocates the cost of positive environmental enhancement. Who is the designated party who benefits therefrom? Are there several parties, and in what ratio of benefit do they share so that costs can be allocated?

3. With respect to off-site storage, numerous issues arise, particularly if there is conjunctive use. Under present California law, the surface landowner is entitled to the ground water underlying the owner's property, so long as the water is not in an underground stream or river. Once conjunctive use is instituted, the initial ground water moved out, replaced with water imbued with a higher degree of Public Trust implications (i.e., Sacramento River water), it will be difficult for the surface owner to establish the nature of continuing rights in the new ground water. This issue must be clearly addressed because of its profound impact on every property owner in the North State. Who would pay for the loss of that right under the beneficiary pay principle?

4. For water districts in the position of OUWUA, off-site storage water might be substituted for present water rights such as pre-1914 adjudicated water rights. If such substitution occurred, pre-1914 rights to specified annual yield and to priority of water use would be at risk. This risk is not merely theoretical. A highly placed official of the Water Resources Control Board, subsequent to release of this EIR/EIS, stated that "all water rights were on the table, including pre-1914 and even Pueblo rights". The legally determined and vested rights of water districts similarly situated to OUWUA must be protected in the program. Moreover, if water is substituted from a new off-site storage facility, the beneficiary pay principle would suggest that the water district pay at either the urban user price or at the cost of construction price, which would again force that entire agriculture community out of business.

5. In short, the beneficiary pay principle, is misleading, too broad, defective in application, and fails to meet the minimum requirement of an EIR/EIS in that the extent, scope and depth of the impacts are nowhere addressed, either program or by definition. In addition, the "beneficiary pays principle" flies in the face of numerous other statements in the EIS/EIR which provide for local control of water sheds and water management. The "local control" principle and the "no redirected impacts" principle will be sacrificed to the overriding "beneficiary pay principle" unless these matters are clearly, completely and comprehensively addressed. At a minimum, a conflict between these principles need to be thoroughly addressed.

B. Local Control Versus State Comprehensive Control. Section 7.2 of the Revised Phase II Report, page 7.2-13, provides for "locally cost effective " standards. The Water Use Efficiency Program Plan contains a "no injury rule" at page 3-9. In the "Solution Principles" there are to be "no significant redirected impacts, in the entirety of the program, within the Bay-Delta" or " in other regions of California". The water shed program plan mandates that it be "socially and politically in concert with local needs and desires", including development of local capacity for improved water shed management in diverse areas.

However, profound conflicts exist when one looks realistically at the program and other principles.

It is unclear how programs such as Environmental Water Accounts (EWA), a Permit system for the transfer of water, or funding of this expensive project can be implemented any way other than on a regional or State wide basis. The "adaptive management plan" itself is susceptible only of regional or statewide control. The overall Program is pervasive, comprehensive and control oriented. With respect to the Revised Phase II Report, the following should be noted:

1. At page 1-6 the Ecosystem Quality Element can easily lead to a taking of existing water rights or a change in the prioritization in the use of water;
2. At page 1-7 the goal is to "improve export water supplies to meet beneficial use needs, and to improve adequacy of water to meet Delta outflow needs, and to provide predictability of water supply. None of these goals can be achieved within the concept of local control.
3. The potential high dollar cost of construction, implementation and maintenance cannot be carried by the local, basically agriculture, economies.
4. The measurable objectives to insure water management can only be implement from State level downward to local units.
5. The concept of conjunctive use itself contemplates statewide control without any meaningful local participation.
6. Page 3-4, contains the following language: " long-term productivity outweighs short-term impacts". This theme is further defined to contemplate changes in land use, changes in application of agricultural resources, and changes in cultural resources. Simply put, this means that profound dislocation of local economies and water use are inconsequential in terms of the true goals of the program.
7. At page 3.8 the water use efficiency and water transfer programs are ddressed. Both reference "more efficient allocation of existing supplies" with a "potential beneficial redistribution of water resources". This can only mean submission of local interest to a statewide control system.
8. Commencing at page 5.1 the significant criteria for "primary water supply reliability" is set forth, including increased access to economically efficient water supplies for all beneficial uses, and increase in operational flexibility, as well as improvement in water quality. Again, only a comprehensive, pervasive statewide system can achieve these goals.

C. The 8 Integrated Program Elements. The 8 integrated and identified program elements are as follows:

1. Ecosystem Restoration;
2. Levee System Integrity;
3. Water Quality;
4. Water Transfers;
5. Water Use Efficiency;
6. Water Shed;
7. Storage;
8. Delta Conveyance

One is hard pressed to see the benefits accruing to the North State under this program. Rather, the Elements provide for a taking and/or reallocation/redistribution of water use for the benefit of others outside of North State, all with burdens to the North State and without positive offsetting benefits.

The Ecosystem in the North State is far superior to anything existing elsewhere in the State. The agricultural basis of the North State economy provides irreplaceable facilities to the entire ecosystem, as that system presently exists.

The Ag nature of the North State limits the increase storm flows occurring in developed areas, thereby minimizing flooding risks and helping to protect the levee system down stream.

Water quality in the North State, particularly in ground water, is presently the best in the State.

Water transfers, without compensation to North State parties, and with the regulatory and cost burdens related to transfers, are not of any benefit to the North State.

The DWR recognized that the North State has an amazingly high water use efficiency. Any enhanced benefits in this program would be minimal.

The water sheds are positively and profitably used at the present time.

Storage would merely substitute water with questionable water rights and priority for what are clear and present rights.

The Delta conveyance is clearly for the benefit of Central and Southern California and is immaterial to the North State,

So it can easily be seen that this is a program rife with burdens to the North State with no clear benefits as the Program is promulgated. These issues must be clearly and fully addressed prior to the Record of Decision (ROD) being published.

D. Adaptive Management and Governance. This entire area is inadequately addressed, fails to raise fundamental issues, and certainly does not provide any meaningful answers.

1. The standards for adaptive management are not set forth.
2. The objective determinant for application of those standards is not identified.
3. Accountability to establish and meet the standards is not addressed.
4. The rules and regulation to determine accountability are not set forth.
5. The effectiveness and durability of the agreement will be determined by establishment of objective standards, review by an impartial entity with the power to impose meaningful penalties to secure compliance with standards. None of these concepts are addressed anywhere in the document.

6. The various State and Federal governmental agencies involved in the CalFed process have separate and independent jurisdictions with legislatively imposed duties which cannot be abdicated without further enabling legislation. The "bricks and mortar" construction elements should not be commenced until the fundamental governance structure is in place and operative.

7. A glaring and critical defect results from the fact that oversight functions and implementation functions rest in the same group. It appears that the source of any appeal would be to the initial decision maker. No matter who is handling the appeal, there does not appear to be standards upon which the appeal determinant can base a decision. In

addition, the situation suggests that a small control group would become the pre-dominant and dominating interest in the entire CalFed program.

8. A question exists as to which persons or entities would evaluate the process of interim management. Again, there does not appear to be any independent process by which interim management would be evaluated. This failure of meaningful evaluation could itself result in the pre-dominant and dominating interest controlling the entire process

9. Although the guiding principle of "adaptive management" is clearly set forth, the "nuts and bolts" of such adaptive management are entirely missing. How is adaptive management to take place? Who would be in charge of the adaptive management process? What standards are to be applied in the adaptive management process?

E. The Public is Accepting Assumptions Sub Silencio. The EIS/EIR is further defective in that it merely identifies broad programmatic actions. However, if the broad programmatic model is approved, in reality the public is approving the assumptions that underly the model. Since those assumptions are not set forth in the EIS/EIR, the public is being asked to approve a model which will govern water use and distribution throughout the entire State for 20 or more years, based upon the mere broad programmatic statements. This is misleading. This is wrong. This fails to meet the legal requirements for EIS/EIR.

F. Procedural and Due Process Defects Exist. The period of time within which the public must review the EIS/EIR (with appendices) is needlessly constrictive in terms of the time necessary to review, digest, and make meaningful comments. This short "window of review" is particularly unsettling and defective in light of the fact that all review of public comments to the prior EIS/EIR are nowhere near completion. Innumerable citizens and groups, with definite but varying points of view, have been unable to secure the EIS/EIR documents at all. They cannot even begin a review. In fact, people who are members of committee, such as the Watershed Management Committee of BDAC, have not been receiving these documents on a timely basis so that meaningful review and comment can be undertaken.

Lack of meaningful review by the public should itself subject these documents to legal challenge. The only means to cure this problem is to provide an extension of time for public comment.

G. The Documents are Subject to Substantive Challenge The purpose of an EIS/EIR is, among other things, to not only set forth the program goals and criteria (as these documents apply set forth), but also and more importantly to set forth the impacts of the various programs, identify alternatives, and to set forth the means to avoid or mitigate those negative impacts.

Except in the most general and conclusionary language, the impacts are not identified, and the means of avoidance or mitigation do not appear.

It appears that the EIS/EIR documents are couched in broad, general language in an attempt to:

1. Avoid meaningful and substantive statements while appearing to address issues;

2. Pass minimum judicial review;
3. Provide "pablum" statements to encourage a mass acceptance;
4. Avoid statement and discussion of assumptions underlying the generalized program.

This will not pass judicial muster.

PRIORITIZATION OF PROGRAM ELEMENTS IS NOT ADDRESSED IN A MEANINGFUL MANNER

At page 2.14 of the Revised Phase II Report, the language provides that storage would be developed and constructed. Each of the four program alternatives include assessment of storage up to 6 million acre feet of water [page 2-1].

At page 3-8, other programs such as water use efficiency and water transfer are intended to provide more efficient allocation of existing supplies, including redistribution of water resources. Such redistribution of water resources would include "the short term adverse impacts" of changes in land use, changes in Ag resources, changes in cultural resources [page 3-4]. Again, at page 3-15, conversion of farm land may result in adverse economic effects, including job losses and reductions in the water supply [pages 3-15, 3-16].

Moreover, the EIS/EIR identifies negative impacts on animals, wildlife, cultural resources and other important elements to our society should off-site storage be built.

Prior to the construction of off-site storage facilities, a clear program of priorities should be established.

It makes no sense to build off-site storage facilities if the water to be diverted and then contained therein cannot be profitably used by transfer through a Delta conveyance. In other words, the Delta conveyance for the additional water should be constructed prior to the construction of off-site storage facilities which would augment the water passing through said Delta conveyance.

To build off-site storage facilities with its concomitant negative impacts would be putting the cart before the horse. It would result in negative impacts without substantive positive benefits. Those negative impacts would be spread over the entire spectrum of human and animal activity.

Construction of the Thames-Newville off-site storage facility would be particularly onerous for people and animals alike. The deer population in California has been declining for a number of years. The Thames-Newville Reservoir would be built directly over the deer trails presently in existence. Worse still, construction of the Tehann Dam would cut off in its entirety the winter ground from the summer ground of the deer, resulting in a substantial but presently indeterminable loss of deer population. It is not just the ground surface taken for the reservoir itself, but the interruption, a la the Alaskan pipeline, of the transit ability of such animals (at least the Alaskan pipeline was elevated so that migration could take place, to some extent, under the pipeline, which is not the case here).

Consequently, the Delta Conveyance system should be approved and constructed prior to any consideration being given to the construction of off-site storage facilities north of the Delta. If conveyance is available, then these profound impacts can then be

addressed. If the conveyance is not constructed for any reason, then these profound impacts can be entirely avoided by avoiding construction of the off-site facilities.

THE PROBABLE NEGATIVE IMPACTS ON THE OUWUA
SHOULD BE IDENTIFIED AND SOLUTIONS PROPOSED
TO AVOID OR MITIGATE THOSE IMPACTS

The OUWUA has exposure to risks unique and extraordinary when compared to any other potential impacts in the entire CalFed Program. Those probable or possible impacts include:

1. Loss of, or reallocation of, pre-1914 water rights. Those water rights can be impacted in any number of ways, including diversion of water by tunnelling into the proposed Sites Reservoir, diversion of Stony Creek water high in the water shed to recharge Sacramento river basin ground water, loss of yield or priority to water through a conjunctive use program, loss of yield or priority through substitution of supply from its present source in the Stony Creek water shed to an off-site storage facility.

Presently, OUWUA has a first priority to both, to captured water and to natural flow water. The entire capacity of the system is used in its full complement on a year to year basis. This right must remain inviolate. OUWUA must be made whole in the event of any shift in use or priority.

CalFed must take account of the benefits to the water shed resulting from existence of OUWUA and its use of water. Tail water presently flows down to other water districts in the Sacramento Valley for subsequent use. A substantial amount of its water percolates into the ground and recharges the ground water system of the Sacramento river ground water basin. Benefits then accrue to places such as the town of Orland, which consequently makes less demand on finite Sacramento river water resources. The mandated agricultural use within the OUWUA slows runoff, lessening the threat of floods and protecting levees in the Delta. What other water resources exist to grow and maintain the habitat for the entire ecological system?

A taking or reallocation of OUWUA water rights not only would have a negative impact in all these areas, but would also lead directly to a disruption of life in the economic and social community, which in turn would cause people to leave for urban areas, thereby exacerbating the problems which CalFed intends to address.

2. Priority of water right is critical OUWUA uses approximately 100,000 acre feet of water per year. That is the entire water right which it has to captured water through the Stony Creek basin. The only other right that OUWUA has is a "natural flow right" to 85,000 acre feet in the Stony Creek water shed itself. In a "critically dry year", the entire 100,000 acre feet of captured water would be consumed, leaving no water available a second "critically dry year". In short, OUWUA would be completely out of water in its second "critically dry year". Since California has regularly had 5 year drought periods, OUWUA would be without any meaningful supply of water even under the present system by which it holds water rights. Any attempt to re-prioritize or reallocate to the detriment of OUWUA and its members would itself lead to the unmitigable, negative impacts. Priority of OUWUA water rights must be maintained. OUWUA must be "made whole" in this scheme.

GROUND WATER AND CONJUNCTIVE USE ISSUES HAVE NOT BEEN THOROUGHLY AND PROPERLY ADDRESSED

In addition to the negative impact previously addressed whereby a clear right to water is replaced by an enhanced public trust interest in the substituted water resulting from conjunctive use, there are other substantial, negative impacts in this area which must be addressed.

1. The percolation rate must be identified and quantified so that there is a neutral result in anything less than critically dry years;
2. The source and amount of recharge (as opposed to percolation) must be, identified and quantified so as to achieve the same neutral result;
3. The term "neutral result" means avoidance of overdraft at the end of any year, whatever end date is actually chosen;
4. The EIS/EIR contemplates overdraft in critically dry years to be replaced subsequently from *in excess* water years. Standards must be in place to protect the ground water facilities from continuous overdraft beginning in critically dry years. In other words, the volume of percolation and recharge capability must be established and quantified so that the ground water is replaced in a reasonable period of time.

A standard which would insure the recharge of ground water would be to create an analytical system such as exists in Orange County where the ground water aquifer must be sufficiently full that salt water cannot impinge on the fresh water source. Certain and constant pressure of fresh water is what keeps the salt water from inundating the fresh water supply. A standard such as this "pressure system" should be suitable and appropriate to preserve and protect the ground water.

5. Issues of Subsidence must be scientifically studied and addressed prior to establishment of any conjunctive use.

IMPACT OF POPULATION GROWTH IN NORTHERN CALIFORNIA

The States population has gone from 1.5 million in 1900 to 20 million in 1970 to over 30 million today. Population is expected to increase to 47.5 million people in the year 2020, with each family needing a quarter acre foot of water per year for consumption.

That increase in the number of California citizens is likely to spread over more of California than exists at present, simply due to diminishing space near the largest metropolitan areas.

As a consequence, the Program must reserve sufficient supplies of water for increasing populations and changing, more intensive uses in the North State for the foreseeable future, including a "safety net of additional" water for growth and changes beyond projections

ANALYSIS OF THE FUNDING FOR THE CALFED PROGRAM DEMONSTRATES A LACK OF EVEN HANDED ANALYSIS

The EIS/EIR is subject to further attack on the grounds that the various alternatives are not being waived with an even hand, as is required by law. The general estimate of current costs for the CalFed, EIS/EIR program is \$5,169,000,000. Of that amount the Integrated Storage Investigation Program is expected to cost \$370 million, of which \$300 million is for south of Delta ground water and north of Delta ground water storage. This leaves only \$70 million for surface water storage study. Clear, pre-established priorities are demonstrated by a simple review of these funding figures. Off-site storage studies are only the tip on a very long tail.

**CALFED HAS FAILED TO INCLUDE THOSE
MOST IMPACTED BY THE PROCESS**

Those giving up rights, having rights reallocated, changing agricultural operations or entire lifestyles, those forced from the land into urban areas have, as a group, been excluded from the CalFed process to this point.

Ordinary citizens', such as those who are members of the OUWUA, are at risk of loss or diminshment their running water rights, their storage water rights, the mannaer in which they use their farms and ranches, the financial viability of those farms and ranches to the extent less or more expensive water is required to be applied. Yet they have been entirely excluded from the process.

In light of the comprehensive nature of the program, including water shed management concepts, and the indirect beneficial results accruing to local municipalities, it has been unfair and inequitable to leave these people "completely in the dark" with respect to the meetings, studies and decisions which have obviously taken place, and which continue to take place.

CalFed must develop a process by which these ordinary citizens can involve themselves in a timely and meaningful way in the process which leads to the ultimate result. This is particularly true where CalFed is requesting the general public to approve generalized concepts and, sub silencio, approve unstated assumptions which will carry forward for a period of 20 to 30 years.

Moreover, some of the concepts such as fallowing of ground will lead to severe economic impacts in the entire economic community due to lessened purchasing power. Purchase of ground will result in properties being removed from the tax rolls, thereby causing an additional tax burden to the remaining citizens. This issue has not been addressed in any way.

**RISKS TO PEOPLE AND DISTRICTS SUCH AS
THE OUWUA AND ITS MEMBERS
CAN CLEARLY BE DISCERNED FROM THE EIS/EIR ITSELF.**

Revised Phase II Report

1. At page 1-6 the Ecosystem Quality Element, can easily lead to a taking of water or change of prioritization and the use of water.

2. At page 1-7, the water supply reliability element has a goal to export water supplies to meet beneficial needs including Bay-Delta outflow needs, and improved predictability of water supplies for beneficial use needs. All of these goals tend to place people, such as ourselves, at risk.

3. Actions related to water conservation are set forth at page 2-11. The Ag conservation incentive programs contain their own risks, resulting from potential high dollar costs imposed on ag users, potential loss of volume of existing water supply through failure to meet program standards with imposed penalties.

4. Under environmental consequences set forth at page 3-3, the results may reduce ag income in local areas and may cause localized adverse social impacts.

5. At page 3.4, the theme that "long-term productivity out weights short-term impacts" means changes in land use, changes in application of ag resources, and changes in cultural resources [see also pages 3-5, and table 3-7]

6. Page 3-8 references "other programs such as the water use efficiency and water transfer programs", mandating "more efficient allocation of existing supplies. Its statement clearly contemplates! redistribution of water resources.

7. At page 3-15 to 3-16, the program contemplates conversion of farmland with adverse economic effects, reduction in water supply, and alteration of land use practices in the upper water shed, resulting in job losses, reduced ag production and industry.

8. At page 5.1-25, significant criteria for primary water supply reliability is set, including increased access to economically efficient water supplies during average and drought periods for all beneficial uses (query: what is the price of economically efficient water?), an increase in water system operational flexibility, as well as improvement in water quality.

9. Section 7.2 deals with ag economics. "Substantially increased production costs" is identified at page 7.2-15. Purchase of water rights for instream flow would require a change in crop patterns and would affect crop values [page 7.2-16].

10. The primary beneficiaries of storage will be CVP Contractors! [page 7.2-18]

11. Power and energy issues may be re-prioritized through diversion of water presently belonging to OUWUA.

12. At page 65, under the water use efficiency plan, the document states that "it is a opportunity for locals to demonstrate that cost-effective use of water standards are being met [this apparently transfers the burden of proof to OUWUA and similarly situated districts and individuals, requiring those districts and individuals to win by a preponderance of the evidence].

13. Next, new rules, procedures and restrictions would be posed upon present relatively unrestricted water use through metering. Both use and transfer would be controlled thereby.

14. At page 96 the environmental water account is described as "prescriptive". This suggests a taking.

15. CalFed states it will develop a strategic plan for ag water efficiency prior to ROD. CalFed states it will rely heavily on local water managers to determine best actions to meet these objectives. However, OUWUA has never been contacted for its input. And we are only now nine months short of the ROD date.

16. Page 7 of the Water Use Efficiency Program plan provides that entities such as OUWUA and similarly situated parties would have to sustain the burden of proof to demonstrate efficient water use in order to receive storage permits

17. The certification process for improving water efficiency and best management practices (bmp) would further constrain present rights to use of water.

All these restrictions are measured against a minor increase of water availability with significant irrevocable negative impacts. As appears in numerous places in the documents, the North State is highly efficient in its use of water, already meeting several of the goals of the CalFed program through multiple use and multiple users.

Consequently, the proposed burdens to be impose on the North State, and the numerous risks (both direct and regulatory) to there existing water entitlement are misplaced and unnecessary.

CONCLUSION

To pass judicial muster, the EIS/EIR must more coherently identify and address the potential negative impacts of this leviathan-like plan. It must meaningfully and thoroughly address means of avoidance and mitigation.

More particular, it is critical that the goals of the CalFed Program be prioritized and organized in such a way that there will be no negative impacts in a particular area until the prior, necessary infrastructure has been constructed, because, only in that way, can needless negative impacts be avoided.

There are numerous direct and indirect threats to users' of water in norther California. They are regulatory in nature, such as establishment of controls on their use of water with regulatory penalties for failing to comply with new CalFed imposed standards. Other regulatory threats are based upon a requirement with complaiance with new regulatory proceedures such as permit systems where none previously existed for adjudicated water.

In addition, there needs to be a balance amoung the competing interest so that the users' in the North State remain whole, so that their interests are not sacrificed for the needs of central and southern California.

A more thorough analysis of the potential, ultimate benefits for enhanced quality and volume of water must be undertaken prior to ROD. The effects of multiple use and transeaporation suggests that there is little to be gained in the Program from the North State, yet with profound, irrevocable burdens resulting to those North State interests.

Respectfully submitted,



John P. Connelly